STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 13, 2008
v	No. 275193 Ottawa Circuit Court
CHRISTIAN MARIA FERENZ, Defendant-Appellant.	LC No. 05-029186-FH

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

Defendant Christian Ferenz appeals as of right her conviction for attempt to obtain a controlled substance by fraud, MCL 333.7407(1)(c). She was convicted following a jury trial and sentenced as an habitual offender, second offense, MCL 769.10, to 45 hours community service and 12 months' probation. We affirm.

Defendant's sole argument on appeal is that the prosecution presented insufficient evidence from which the jury could conclude, beyond a reasonable doubt, that she committed the charged crime. We review a challenge to the sufficiency of the evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Viewing the evidence in the light most favorable to the prosecution, we determine whether a rational jury could find "that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We do not decide what testimony to believe; rather, we resolve any conflicts in the evidence in the prosecution's favor, *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997), and give great deference to the jury's verdict particularly in matters of credibility of conflicting testimony, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 333.7407(1)(c) provides that "a person shall not knowingly or intentionally . . . [a]cquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge." The elements of an attempt are: (1) intent to perform an act or bring about a consequence which would constitute the crime, and (2) an act towards the commission of the crime that is more than mere preparation. *People v Frost*, 148 Mich App 773, 776; 384 NW2d 790 (1985). Thus, for a conviction of an attempt to obtain a controlled substance by fraud, the prosecutor must prove that (1) the substance at issue was a controlled substance; (2) the defendant knowingly or intentionally attempted to obtain possession of the controlled substance; and (3) the defendant attempted to obtain the controlled substance by fraud. *Id.*; MCL

333.7407(1)(c). In addition, the prosecution must always prove the identity of the perpetrator beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967).

After reviewing the evidence in the light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence to support defendant's conviction. It is undisputed that in January of 2005, defendant attempted to fill a prescription for extra-strength Vicodin. Marcia D'Alcorn, a pharmacist at the Walgreen Drug store where defendant left the prescription to be filled, testified that Vicodin is a controlled substance because it contains hydrocodone. Defendant admitted that she was a licensed practical nurse, was familiar with controlled substances, and had taken Vicodin on previous occasions. Thus, a rational jury could conclude that the Vicodin was a controlled substance and defendant knew it was a controlled substance.

Debra Stayman, the physician's assistant who wrote the prescription, testified that she did not prescribe extra-strength Vicodin to defendant or write "ES," for extra-strength, on the prescription form. Stayman's treatment notes confirm that she prescribed Vicodin, not extra-strength Vicodin. Yet, the prescription form that defendant left at the pharmacy included the letters "ES." Further, the fact that the "ES" appeared to be "crammed in" next to the word "Vicoden" [sic] suggests that the "ES" was added after the prescription was originally written. Thus, a rational jury could conclude, beyond a reasonable doubt, that the alteration was a fraudulent attempt to obtain extra-strength Vicodin.

Finally, defendant admitted that she delivered the prescription form to the pharmacy and that no one besides herself, Stayman, and pharmacy staff had access to the form. Stayman testified that she prescribed regular-strength Vicodin to defendant and her treatment notes confirm her testimony. D'Alcorn noticed the alteration to the prescription form and then notified both Stayman and the police. Therefore, it can be reasonably inferred that D'Alcorn did not add the "ES." There was no evidence that any other pharmacy employee altered the prescription form or that the pharmacy would have profited from the alteration. In fact, D'Alcorn testified that 30 extra-strength Vicodin pills sold for only $1.30 more than 30 regular-strength Vicodin pills. Based on this evidence, a rational jury could conclude that defendant altered the form herself. Viewing the evidence in the light most favorable to the prosecution, a rational jury could conclude, beyond a reasonable doubt, that defendant committed the charged offense.

Defendant denies that she added the "ES" to the prescription form and offers alternative theories to prove her innocence. We note, however, that the prosecution, even when relying on circumstantial evidence, is only required to prove its own theory of the case; it is not required to disprove the defendant's theories of innocence. *People v Hardiman*, 466 Mich 417, 423-424; 646 NW2d 158 (2002). Moreover, the jury witnessed the testimony, weighed the evidence and the credibility of the witnesses, and concluded that defendant's denials and explanations were not credible. We will not second-guess the jury's determination. *Nowack*, *supra* at 400; *Wolfe*, *supra* at 514-515.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski
/s/ Jane M. Beckering